

IN THE DRAWINGS

The attached sheet of drawings includes changes to Fig. 10. This sheet, which includes only Fig. 10, replaces the original sheet which includes Fig. 10.

Attachment: Replacement Sheet

REMARKS/ARGUMENTS

Favorable reconsideration of this application, in view of the above amendments and in light of the following discussion, is respectfully requested.

Claims 1-6 are pending. Claims 1-6 are amended. No new matter is introduced.¹

In the outstanding Office Action, Figures 10-14 were objected to under 37 C.F.R. § 1.84(p)(5); the Abstract was objected to under 37 C.F.R. § 1.72(b); the Title was objected to for not being sufficiently descriptive; the Disclosure was objected to for containing grammar and spelling errors; Claims 1-5 were rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter; Claims 1-4 and 6 were rejected under 35 U.S.C. § 102(a) as being anticipated by Liu (“AOTO: Adaptive Overlay Topology Optimization in Unstructured P2P Systems”, IEEE Globecom 2003, Vol. 7, pp. 4186 - 4190, December 4, 2003; hereafter Liu); and Claim 5 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Liu in view of Traversat (U.S. Patent Application Publication No. 2002/0147771, hereafter “Traversat”).

In response to the objection to the Figures, submitted herewith is a letter submitting drawing sheets along with one replacement sheet for Figure 10. Figure 10 is amended to include reference characters for the virtual connections discussed at page 11, line 29 to page 12, line 6, for example. However, the route names appearing in the column labeled “Route Name” in Figures 11-14 are merely names used in computing the metric values for each of the virtual connections. They are not reference characters under 37 C.F.R. § 1.84(p)(5), and amendment to Figures 11-14 is unnecessary. Therefore, it is submitted that Figures 10-14 are in compliance with the requirements of 37 C.F.R. § 1.84(p)(5) and it is respectfully requested that the objection to these Figures be withdrawn.

¹ Support for the amended claims can be found at least in the claims as originally filed, for example.

Further, the Abstract is amended to cure the deficiencies noted in the outstanding Office Action, the Title is amended to be more descriptive, and the grammatical and spelling errors in the Disclosure are corrected. Thus, it is respectfully requested that the objections to the Specification be withdrawn.

Next, Claims 1-5 are amended to recite “a node device”, in conformity with the requirements of 35 U.S.C. § 101. Accordingly, it is respectfully requested that the rejection of Claims 1-5 under 35 U.S.C. § 101 be withdrawn.

With respect to the rejection of Claim 1-4 and 6 under 35 U.S.C. § 102(a), Applicants submit herewith two documents demonstrating that the claimed invention was conceived before the publication date of Liu and diligently reduced to practice.

The first document, as translated, is entitled “Order Letter” and was transmitted to the Japanese law firm Myoshi and Myoshi on November 21, 2003 for the purpose of filing a regular application for patent in the Japanese Patent Office. The Order Letter bears Applicants’ reference number 2003P06083, and includes papers stamped with the date of October 14, 2003 relating to a “Method for Generating Network Topology.” Figures 1-5, 7-9 and 11-17 in the subject application are found in the “Order Letter,” and thus evidence that the claimed invention was conceived prior to the effective date of Liu.

The second document, entitled “Patent Search Report,” was transmitted to Applicants by the Myoshi and Myoshi law firm in response to the Order Letter. As translated, the Patent Search Report, dated November 30, 2003, includes a search of published patents for Applicants’ reference 2003P06083 (Method for Generating Network Topology) and comments from the Myoshi and Myoshi firm.

Concurrently, as is clear from the short time between November 30, 2003 and December 24, 2003, the Myoshi and Myoshi law firm worked diligently to draft a patent application concerning the subject matter of the Order Letter and the Patent Search Report,

and filed the same in the Japanese Patent Office as Japanese Patent Application 2003-427892 on December 24, 2003. The present Application (Serial No. 10/584,269) claims the benefit of this filing date under 35 U.S.C. §119.

Turning to the applied reference, Liu was published on December 3, 2003. However, as the Order Letter demonstrates, the claimed invention was conceived at least as early as October 14, 2003. Further, the Japanese law firm Myoshi and Myoshi conducted a search as evidenced by the Patent Search Report dated November 30, 2003, prepared a draft application, and then filed Japanese Application 2003-427892 on December 24, 2003. Since the prior art search was followed by the filing of a Japanese patent application 24 days later, it is self-evident that Myoshi and Myoshi worked diligently to draft and file the application, thus constructively reducing the invention to practice. Consequently, it is submitted that the claimed invention predates Liu and Liu therefore does not qualify as an anticipatory reference against at least Claims 1-4 and 6. Accordingly, Claims 1-4 and 6 are in condition for allowance, and it is respectfully requested that the rejection of Claims 1-4 and 6 under 35 U.S.C. §102(a) be withdrawn.

With respect to the rejection of Claim 5 as being unpatentable over Liu in view of Traversat, for the reasons discussed above, Liu does not anticipate Claim 5, and Traversat does not disclose every element recited in Claim 5. Therefore, Claim 5 is in condition for allowance, and it is respectfully requested that the rejection of Claim 5 under 35 U.S.C. § 103(a) be withdrawn.

For the reasons discussed above, no further issues are believed to be outstanding in the present application, and the present application is believed to be in condition for formal allowance. Therefore, a Notice of Allowance from Claims 1-13 is earnestly solicited.

Should the Examiner deem that any further action is necessary to place this application in even better form for allowance, the Examiner is encouraged to contact Applicants' undersigned representative at the below listed telephone number.

Respectfully submitted,

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